

VZCZCXRO3915  
OO RUEHCHI RUEHCN RUEHDT RUEHHM  
DE RUEHJA #0956/01 1350917  
ZNR UUUUU ZZH  
O 140917Z MAY 08  
FM AMEMBASSY JAKARTA  
TO RUEHC/SECSTATE WASHDC IMMEDIATE 8998  
INFO RUEHZS/ASSOCIATION OF SOUTHEAST ASIAN NATIONS PRIORITY  
RUEHBY/AMEMBASSY CANBERRA 2485  
RUEHKA/AMEMBASSY DHAKA 0955  
RUEHNE/AMEMBASSY NEW DELHI 1834  
RUEHKO/AMEMBASSY TOKYO 1956  
RUEHWL/AMEMBASSY WELLINGTON 2641  
RUEHHK/AMCONSUL HONG KONG 2669  
RUEHPT/AMCONSUL PERTH 0792  
RUEAWJB/DEPT OF JUSTICE WASHDC  
RHEHNSC/NSC WASHDC  
RUEATRS/DEPT OF TREASURY WASHDC  
RUEAIIA/CIA WASHDC

UNCLAS SECTION 01 OF 03 JAKARTA 000956

SENSITIVE  
SIPDIS

DEPT FOR EAP, EAP/MTS, EAP/MLS, INL FOR BOULDIN  
DEPT FOR EEB/IFD/OMA  
DOJ/OPDAT FOR LEHMANN/ALEXANDRE  
SINGAPORE FOR BAKER  
TREASURY FOR IA-BAUKOL  
NSC FOR EPHU

E.O. 12958: N/A  
TAGS: [PGOV](#) [KJUS](#) [KCOR](#) [KMCA](#) [PREL](#) [ID](#)  
SUBJECT: SUPREME COURT PROGRESSES BUT RESISTS GREATER  
ACCOUNTABILITY

REF: A. JAKARTA 856  
[1](#)B. JAKARTA 183  
[1](#)C. 07 JAKARTA 2953  
[1](#)D. 07 JAKARTA 2722

JAKARTA 00000956 001.2 OF 003

[1](#)1. (SBU) SUMMARY: Despite progress on several fronts, the Supreme Court continues to resist efforts to introduce greater accountability. The Court's 2007 annual report cites progress on workload management, case management and transparency, but critics complain that the Court has blocked external supervision of its finances and efforts to make judges more accountable. Court leadership is due to turn over in 2008, but a significant change in direction is unlikely, given the internal dynamics currently operating at the Court. END SUMMARY.

#### PROGRESS TOWARDS GOALS

[1](#)2. (U) The Supreme Court's 2007 annual report cites progress in a number of areas related to the blueprint for judicial reform launched in 2004 (ref B). According to the report, the Court improved its handling of cases, resulting in a decrease in the number of cases pending decision to 9,400 at the end of 2007 from over 12,000 in 2006. The report noted progress towards implementing the Court's new policy on transparency, including the publishing of over 3000 decisions on the Court's website. The report also heralded the initiation of a certification program for judges who will handle anti-corruption cases. Some 97 judges have completed the two-week-long certification process thus far, and the Court intends to create a pool of up to 1200 certified anti-corruption judges around the country. USG's Millennium Challenge Corporation Threshold Program (MCC) and USAID have supported several of these initiatives.

#### RESISTING EXTERNAL AUDITS

[1](#)3. (U) Despite the progress noted above, Embassy contacts

report that the Court continues to resist effort to introduce greater accountability. One of the key issues is the Court's refusal to allow external auditing of its finances. According to the annual report, Indonesia's courts collected Rp 143 billion (about USD \$15 million) in case fees in 2007. (Note: observers have speculated that the total may in fact be significantly higher.) Last fall, the Supreme Audit Board (BPK) filed a criminal complaint against Chief Justice Bagir Manan because he refused to allow BPK to audit these accounts. Manan cited a colonial-era law which indicated that case fees were not considered "state revenue"--a posture most legal observers today consider indefensible--and therefore were not under the jurisdiction of BPK.

14. (SBU) The struggle was supposedly resolved after President Yudhoyono pledged to draft an executive order which would resolve the legal question (ref D). Eight months later, the executive order has yet to be issued and the problem has resurfaced. According to one judicial expert, part of the problem is that courts cannot hold financial accounts in Indonesian banks; as a result, accounts are generally held in the name of individual judges. Moreover, funds deposited by plaintiffs into those accounts are supposed to be either used to cover specific court services or refunded to the plaintiffs at the conclusion of trial. In practice, however, refunds rarely occur, effectively creating slush funds for judges to dispose of as they see fit.

#### WEAK SUPERVISION

15. (SBU) The Court is also reluctant to exercise effective supervision over the behavior of Indonesia's judges. After the Constitutional Court stripped away the powers of the Judicial Commission (at the Supreme Court's request) in 2006,

JAKARTA 00000956 002.2 OF 003

the Court regained the obligation to police its own ranks (ref C). According to the annual report, 18 judges (out of some 6000 total) were subject to disciplinary action in 2007 for ethical or procedural violations. Observers point out, however, that only one judge was charged with corruption despite widespread claims of judges taking bribes. According to one Supreme Court Justice, there is no enthusiasm among the justices for stronger supervision because of fear that tougher standards will eventually be applied to the justices themselves.

#### OPPOSING NON-CAREER JUDGES

16. (SBU) Embassy contacts have also criticized the Court's resistance to the use of non-career judges. The Constitutional Court and the Anti-Corruption Court (ACC)--two institutions which, unlike the general courts, are generally viewed as honest and effective--both contain majorities of non-career judges. While career judges follow bureaucratic career paths that are controlled by the Supreme Court, non-career judges--who normally come from private law practices or the academic world--are not beholden to senior judges for placement or promotion. They are seen as less susceptible to outside influence. Observers and NGOs frequently argue that non-career judges dramatically improve the quality of decisions in high-profile cases.

17. (SBU) However, the Supreme Court has actively resisted the use of non-career judges, according to contacts. A contact told poloff that the non-career judges on the ACC waited almost a year before receiving a paycheck from the court bureaucracy, which is under the Supreme Court's control. An NGO contact noted that the Court has barred non-career judges from participating in the Court's anticorruption judge certification process (see above), despite a current proposal by the Ministry of Law and Human Rights to place non-career judges in provincial courts specifically to hear corruption cases (ref A). He speculated that this may be an attempt by the Court to make an end run around those plans.

## EXTERNAL PRESSURE DRIVING REFORMS

18. (SBU) A contact at the Center for Law and Policy Studies (PSHK) told poloff that ongoing reforms at the Court are largely the result of external pressure. The contact cited the Court's Reform Team (an external body which the current Chief Justice helped establish), and a pilot reform project organized by the Corruption Eradication Commission and the Ministry of Finance (MoF), as the major movers of court reform. Indeed, the MoF recently approved a significant increase in non-salary allowances for Court officials based on progress towards reform goals. Our contact complained, however, that the incentives were granted too liberally, and suggested that future incentives be tied more strictly to performance benchmarks.

## NEW WINE, OLD BOTTLES?

19. (SBU) The impending retirement of the Chief Justice and key deputies over the next year will bring new leadership to the Court. However, contacts are pessimistic that the new leaders will prove more progressive given the resistance shown by the justices, who elect their own leadership. According to one expert, the internal politics of the Court are heavily influenced by the group of justices from Indonesia's religious courts, a largely conservative group which comprises more than 25% of the justices even though religious cases represent only 3% of the Court's docket. A senior justice agreed that the current makeup of the Court was problematic, as religious and military judges often decide civil and criminal matters which lay outside their

JAKARTA 00000956 003.2 OF 003

area of expertise. (Note: Indonesia's religious courts handle mainly family law and inheritance cases.) This Justice told us that the mismatch of expertise to caseload--rather than corruption--was the main cause of the poor decision making at the Court.

110. (SBU) Supreme Court reform is a long-term process where much remains to be done. External forces--including foreign donors such as MCC--will help keep current projects in place, but greater accountability will probably come only with a generational turnover of Court personnel. When this will occur depends to some degree on the legislature, which later this year will begin the process of appointing new Commissioners to the Judicial Commission which nominates new justices. This selection will be crucial to improving the quality of justices appointed to the Court.

HEFFERN